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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,227	01/16/2004	Masafumi Masuda	247863US90	5743
22850	7590	01/24/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.			EXAMINER	
1940 DUKE STREET			HUYNH, NAM TRUNG	
ALEXANDRIA, VA 22314			ART UNIT	PAPER NUMBER
			2617	
			NOTIFICATION DATE	DELIVERY MODE
			01/24/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/758,227	MASUDA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Nam Huynh	2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11/2/07.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

### ***Response to Amendment***

This office action is in response to amendment filed on 11/2/2007. Of the previously presented claims 1-3, no amendments were made.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishikawa et al. (US 2002/0114289) (hereinafter Ishikawa) in view of Zhang (US 6,778,812), and further in view of Hamalainen et al. (US 2003/0043774).

Regarding claims 1 and 3, Ishikawa discloses a communications system employing novel scheme of radio channel setting control (title). The system comprises a radio network control apparatus (radio control device) that controls a plurality of base stations, which covers a respective one of divided radio zones (cells). The base

stations and mobile stations transmit user information between each other wherein the user information is spread into a wide-band radio spectrum in proportion to the transmission rate (plurality of cells with different frequency bands exist at the same location). The radio network control apparatus comprises a spread code management/allocation processing part that manages use situations of the spread codes in the subordinate base stations based on a spread code management table stored in memory. The spread code management/allocation processing part determines whether it is possible to allocate a spread code for the base station when there is a request such that a radio channel is to be setup between the base station and the mobile station (page 7, paragraph 98). However, Ishikawa does not explicitly disclose that the radio network control apparatus comprises:

*code selection trial means for each cell, provided in association with each of the plurality of cells, for trying to select a spread code for the associated cell under a predetermined condition;*

*determination means for determining for whether to try to select a spread code again under a different condition from the condition that has been used in the selection trial, when the selection trial of the spread code by each code selection trial means under the predetermined condition has been terminated without any successful selection of the spread code; and*

*control means for controlling the code selection trial means and the determination means and the determination means so as to cause the code selection trial means to try to select the spread code sequentially for the plurality of cells under*

*the predetermined condition, cause the determination means to determine whether to try to select the spread code again under the different condition from the condition that has been used in the selection, after the termination of the selection trial by each code selection trial means, and cause the code selection trial means to try to select the spread code sequentially for the plurality of cells under the different condition when it has been determined that the selection should be tried again.*

Zhang discloses a system and method for call admission control (title). Zhang teaches a code selection trial procedure (code selection trial means) wherein codes are selected based on loads (predetermined condition) of the target cell and neighboring cell (plurality of cells) (see figure 1). In the procedure, the codes are selected sequentially because the first code in the set is evaluated in the procedure, and once the procedure is completed, the next code is evaluated if there are more codes to assign (figure 1, items 12, 24, 30). Furthermore, if a code cannot be assigned, then the procedure ends (figure 1, item 26, 30) (terminated without any successful selection of the spread code). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the radio network control apparatus of Ishikawa to include the code selection trial procedure of Zhang, in order to perform call admission control properly and to optimize the load of the target cell and neighboring cells in the network.

However, the combination of Ishikawa and Zhang does not explicitly disclose that that the code that was not selected or considered based on the code selection trial procedure is evaluated under a different condition from the condition used in the initial

selection trial. Hamalainen discloses dynamic reselection of CDMA spreading codes (title). In the scope of the invention, spreading codes are reselected based on current transmission delay and signal strength (trying to select a spread code under a different condition than the predetermined condition) for each multi-path component of each channel upon determination that a channel has degraded (page 1, paragraph 7). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Ishikawa and Zhang, to include the ability to reselect spread codes under a different condition, as taught by Hamalainen, in order to determine optimum code combinations under current conditions when a new mobile station is to be initiated, or when performance for an existing mobile station falls below a predetermined threshold.

Regarding claim 2, Hamalainen teaches that OSVF codes are assigned for mobiles (page 1, paragraph 6).

***Response to Arguments***

4. Applicant's arguments with respect to claims 1-3 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nam Huynh whose telephone number is 571-272-5970. The examiner can normally be reached on 8 a.m.-5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on 571-272-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NTH  
1/16/08



GEORGE ENG  
SUPERVISORY PATENT EXAMINER